

Executive Summary

The Department of Commerce's International Trade Administration, working closely with the Office of General Counsel, produced this report in accordance with the requirements of Section 6 of the International Anti-Bribery and Fair Competition Act of 1998 (IAFCA). The report was completed with the assistance and cooperation of a number of U.S. agencies, including the State Department, the Justice Department, the Treasury Department, the Securities and Exchange Commission, and the Office of the U.S. Trade Representative.

The report reviews the progress that is being made in implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The Convention, which has been signed by all twenty-nine OECD members and Argentina, Brazil, Bulgaria, Chile, and the Slovak Republic, entered into force on February 15, 1999, for the twelve signatories that had deposited instruments of ratification with the OECD. In addition, the report examines steps taken by signatories to implement the OECD recommendation to disallow the tax deduction of bribes. It also assesses antibribery programs and transparency in several major international organizations. Finally, the report addresses progress made on advancing other goals in the IAFCA relating to fair competition in global satellite communication services.

In the initial phase of monitoring the Convention, these reports will focus on analyzing national implement-

ing legislation. The legal framework is critical for governments to fulfill their commitment to criminalize the bribery of foreign public officials and disallow the tax deductibility of bribe payments. As signatories begin confronting cases involving the bribery of foreign public officials, attention will shift to examining enforcement of the prohibitions on bribery and the tax deductibility of bribes.

Major Findings

■ The first priority is to ensure that all signatories deposit their instruments of ratification with the OECD at the earliest possible date. As of June 10, 1999, fifteen of the thirty-four signatories, representing approximately 66 percent of OECD exports, had completed their internal approval process and deposited instruments of ratification with the OECD secretariat. Twelve of these countries are now parties to the Convention and the others will be sixty days after their deposit of an instrument of ratification. Nevertheless, a number of key exporting countries, including France, Italy, Switzerland, and the Netherlands, have not yet completed the necessary steps to bring the Convention into effect.

■ As the Convention enters into force for the remaining signatories, there will be more attention given to

encouraging new participants. The most appropriate candidates for accession are likely to be significant exporters whose governments are well equipped to take on the responsibilities of implementing the Convention.

■ Overall, the United States is encouraged by the seriousness with which signatories are approaching implementation of the Convention. Eleven foreign signatories presented implementing legislation in time for the Commerce Department to make a preliminary review for this report. Generally the eleven countries examined have sought to address the requirements of the Convention. In some implementing legislation, however, a number of issues require further examination.

■ The OECD has established comprehensive procedures to examine the adequacy of the laws that each signatory enacts to carry out the goals of the Convention. The review process is still at an early stage. The United States is confident that each country's legislation will be subjected to a rigorous and comprehensive review that will identify any shortcomings. The OECD is scheduled to complete its review of implementing legislation by the spring of 2000 in time to report to OECD ministers at their annual meeting.

■ The United States has established its own monitoring process to track implementation and enforcement of the Convention. Preparation of this annual report is part of that process. Information developed through U.S. internal monitoring supports active participation in OECD meetings on the Convention and bilateral discussions with other signatory governments on implementation issues.

■ The signatories to the Convention have made great strides towards eliminating any remaining tax deductibility for bribes to foreign public officials. Some countries have not yet acted to disallow such deductions, and in others questions remain about the implementation of the laws ending tax deductibility. Because of the importance of this issue, the United States will be giving increased attention over the coming year to assessing the signatories' legislation on tax deductibility and encouraging effective implementation of this commitment.

■ Since the Convention has been in force for only a few months, it is too early to make definitive judgements regarding the effectiveness of enforcement measures by almost all signatories. In future reports, as the United States and OECD develop more information on enforcement activity in each of the signatory countries, each

party's enforcement of the Convention will be analyzed. Several countries are taking significant steps to raise public awareness of international bribery and to promote implementation of the Convention. The Swedish government is appointing a special ambassador for this purpose. The United States will encourage other governments to increase public awareness. Nongovernmental organizations are active in educating their business communities about the Convention and antibribery issues, particularly in Australia, Bulgaria, Canada, and Poland.

■ At the urging of the United States, the OECD Working Group on Bribery has been examining issues relevant to strengthening the Convention. Two issues are of particular importance: bribery acts in relation to foreign political parties, and advantages promised or given to any person in anticipation of that person becoming a foreign public official. Other issues being examined include bribery of foreign public officials as a predicate offense for money laundering legislation, the role of foreign subsidiaries in bribery transactions, and the role of offshore financial centers in bribery transactions. While there is no consensus within the Working Group on the need to expand the scope of the Convention at this time, the OECD has agreed to continue to examine these issues.

■ Major international organizations have been making greater efforts to address international bribery and transparency issues. The OECD, the Organization of American States (OAS), the World Trade Organization, and the United Nations have launched a variety of anti-corruption initiatives. The antibribery conventions negotiated in the OECD and OAS represent important progress in building international coalitions to combat corruption. Due in part to strong U.S. advocacy, international financial institutions, such as the World Bank, the International Monetary Fund, and regional development banks, are devoting more resources to help client countries eliminate corrupt practices. INTELSAT, the major public international satellite organization, is addressing transparency and antibribery issues in its policies and programs.

■ For more than a decade, the U.S. government has worked cooperatively with the private sector on antibribery initiatives. U.S. business associations and nongovernmental organizations, such as Transparency International, played a key advisory role in the negotiation of the Convention and the passage of implementing legislation. The U.S. government will continue to involve the private sector in its efforts to monitor the Convention.

■ International satellite organizations have, in the past, enjoyed advantages through the use of privileges and immunities that have limited direct regulatory oversight and insulated them from competition laws. Such advantages appear to be diminishing as international satellite organizations face increased competition and move toward privatization and as the global trend toward open markets accelerates. Other advantages in tax treatment, regulatory treatment, government ownership, or government contacts are not apparent based on available information. In a step toward procompetitive privatization, INTELSAT transferred one-quarter of its satellite fleet to the private Dutch corporation New Skies Satellites, N.V., on November 30, 1998. Inmarsat completed its privatization on April 15, 1999. Accordingly, the U.S. government ceased its oversight of Inmarsat acting through Comsat.

Eliminating the pernicious effects of bribery in international trade has been a priority of Congress and successive administrations for over two decades. With the entry into force of the Convention, a good start has been made in addressing this problem at the global level, even though progress has not been even among all signatories. In the coming year, the Clinton Administration intends to redouble its efforts to ensure that the remaining signatories that have not done so enact appropriate implementing legislation, ratify the Convention, and deposit instruments of ratification with the OECD.

However, fully achieving the goal of eliminating bribery in international business transactions will be a long-term process. The Commerce Department's International Trade Administration and Office of General Counsel will work closely with other U.S. agencies to ensure effective monitoring of the Convention with broad input from the private sector and nongovernmental organizations.

